

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

A.F. of L-A.G.C. BUILDING TRADES )  
PENSION & WELFARE PLANS, J.E. )  
STOKELEY, ANDREW JOINER, WENDALL )  
McABEE, LARRY FINCHER, CHARLES )  
LOFTIN, and GORDON PARMER, as Trustees )  
of the Plans, )

Plaintiffs, )

vs. )

W.E. DAVIS & SONS CONSTRUCTION )  
COMPANY, INC., )

Defendant. )

CIVIL ACTION NO. 03-0769-P-L

ORDER

Pending before this court in this action brought under the Employees Retirement Income Security Act of 1974, 29 U.S.C. § 1132 and § 1145, is Plaintiffs' Motion to Compel discovery in the aid of execution of a previously entered Consent Judgment (doc.18; see doc.16). Defendant was afforded the opportunity to respond on or before August 12, 2005 (doc.19). No response has been filed.

On November 12, 2003, plaintiffs filed this action seeking to collect delinquent contributions to A.F. of L-A.G.C. Building Trades Pension and Welfare Plans (doc.1). On April 21, 2004, the parties to this action executed a Joint Motion For Entry of Consent Judgment (doc.15). The Motion set forth specific admissions by defendant of the amounts owed to plaintiffs' Plans in the total amount of \$15,617.68. The Motion is co-signed by plaintiffs' counsel of record Kimberly Calametti Walker, and defendant's counsel of record J. Charles Wilson. Id. On April 22, 2004, a Consent Judgment was entered (doc.16).

On March 29, 2005, plaintiffs filed Notice of Service of Discovery upon defendant, service of interrogatories and a request for production of documents pursuant to Rule 33, and Rule 34 of the Federal Rules of Civil Procedure in aid of execution of judgment (doc.17; see doc.18, Exhibit 1). The Certificate of Service reflects that copies of the discovery request were sent to defendant and defendant's counsel (doc.18, Exhibit 1).

On July 26, 2005, plaintiffs filed the subject Motion to Compel (doc.18). Plaintiffs contend that in May, 2005, Mr. Wilson's office contacted Ms. Walker's office and stated that responses to the interrogatories would be filed. With no response forthcoming, Ms. Walker sent correspondence to Mr. Wilson, dated July 20, 2005, in an attempt to resolve any discovery disputes (doc.18, Exhibit 2). No response was garnered. On July 25, 2005, Ms. Walker attempted to contact Mr. Wilson by telephone, a message was left for him. Plaintiffs' counsel contends that to date, there has been no response. Plaintiffs seek an order compelling defendant to respond to its propounded interrogatories. Id.

Pursuant to 29 U.S.C. § 1145, "[e]very employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collective bargained agreement shall... make such contributions in accordance with the terms and conditions of such plan or such agreement." Defendant consented to Judgment entered against it in the amount of \$15,617.68.

Accordingly, in consideration thereof, and in consideration of the fact that defendant has had a generous opportunity to respond to the Motion to Compel and has failed to do so, it is hereby ORDERED that defendant SHALL file responses to Plaintiffs' Discovery in Aid of Execution of Judgment on or before Wednesday, August 31, 2005, or appear in Chambers on Thursday, September 1, 2005, at 11:00 a.m., to show cause for the failure to do so. Further, this court will consider the imposition of sanctions, including but not limited to plaintiffs' attorney's fees and costs, upon defendant and defendant's counsel should defendant fail to timely respond.

DONE this 16<sup>th</sup> day of August, 2005.

S/Virgil Pittman  
SENIOR UNITED STATES DISTRICT JUDGE